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Contracting Officer Brief

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FUNDING INSTRUMENTS

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- Grant - the **principal purpose** of the instrument **is to transfer a thing of value to the recipient to carry out a public purpose** of support or stimulation authorized by a Federal statute and **substantial involvement is not expected** between DARPA, acting for the Federal Government, and the recipient during performance of the contemplated activity
- Cooperative Agreement - the **principal purpose of the instrument is to transfer a thing of value to the recipient to carry out a public purpose** of support or stimulation authorized by Federal statute, and **substantial involvement is expected** between DARPA, acting for the Federal Government, and the recipient during performance of the contemplated activity



FUNDING INSTRUMENTS

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- **Contract** - the principal purpose of the instrument is **acquisition by purchase, lease, or barter of property or services for the direct benefit** or use of the Federal Government or whenever DARPA determines in a specific instance that the use of a type of procurement contract is appropriate
- **Other Transaction for Research/Technology Investment Agreement (TIA)** - **when a contract, grant or cooperative agreement is not feasible or appropriate**, DARPA may enter into an other transaction that facilitates the accomplishment of its mission, which is not contrary to law, and which is in the public interest



FUNDING INSTRUMENTS

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- **Other Transaction for Prototype** - a legally binding instrument other than a procurement contract, grant, cooperative agreement, or other transaction for research/TIA **used for a prototype project** proposed to be acquired or developed by the Department of Defense (DoD)



TOOL BOX

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Acquisition		Non-Acquisition				
Procurement Contracts	Non-Procurement Contracts	Grants	Cooperative Agreements		OTs	
10 U.S.C. 2304 31 U.S.C. 6303 ↓ Federal Acquisition Regulations	*Non-appropriated funds contracts	10 U.S.C. 2353 31 U.S.C. 6304	10 U.S.C. 2358 31 U.S.C. 6305	Technology Investment Agreements (TIAs) 10 U.S.C. 2358	Other 10 U.S.C. 2371	
	*Section 845		Traditional	Flexible	Multi-Party Commercial Firm Consortia	Bailments Lease Arrangement Loan-to-Own
	*NASA Space Act	OMB Circ. DODGAR	OMB Circ. DODGAR	Recoupment Authority 10 U.S.C. 2371(d) DDRE Letter	Consortia Recoupment Authority 10 U.S.C. 2371(d) DDRE Letter	
PART 15 Cost/Price Based	PART 12 Commercial Items Price Based	Exception to Bayh-Dole Act	Bayh-Dole Act	Bayh-Dole Act	Exception to Bayh-Dole	

CRADA - A legal agreement between a federal laboratory and industry used for the transfer of commercially useful technologies from federal laboratories to the private sector and to make accessible unique technical capabilities and facilities.



Questions???



TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- TIAs are flexible instruments!!!
 - Reduce barriers to encourage participation by for-profit firms that have not traditionally done business with the Government.



TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Barriers include:
 - *Standards for financial management systems
 - *Cost principles
 - *Rights to technical data and computer software
 - Patent rights
- Flexibility permitted under part 37 of the interim - guidance draft of DODGARS for Cooperative Agreements under 10 U.S.C. 2371.



TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Is a TIA appropriate?
 - Factors to consider:
 - The nature of the project
 - Stimulation or support of research
 - Relevance to integrating the technology and industrial bases
 - The type of recipient
 - A for-profit firm is to be involved in the research project
 - Usually appropriate for consortiums
 - Single firm: sharing of technology between a firm's government and commercial divisions



TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Is a TIA Appropriate?
 - Factors to Consider (continued)
 - The Recipient's Commitment and Cost Sharing
 - Evidence of Self-Interest in Incorporating Technology into Products
 - To Maximum Extent Practicable, Non-Federal Parties Provide at Least Half the Resources from Non-Federal Sources
 - Degree of Involvement of the Government Program Official
 - Greater programmatic involvement before and during program execution
 - Participation in periodic review of progress and revisions of plans for future efforts



TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Bayh-Dole Statute
(*Chapter 18 of Title 35, U.S.C.*)
 - License for Government purposes -- non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced such inventions for or on behalf of the United States throughout the world.
- Flexibility:
 - Possible in allowing more time to:
 - Notify the government of an invention
 - Inform the government of intent to take title to an invention
 - Commercialize an invention before government license rights take effect



TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- No government rights except march-in
- Government approval of foreign access to technology
 - A reasonable license for government use will be negotiated



TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Payments
 - Cost reimbursement
 - Advance payment
 - Payable milestones
- Payable milestones
 - Predetermined measures of observable, technical progress
 - If project expenditures do not approximate payment for completed milestones
 - Adjust future payments as needed
- Interest



TECHNOLOGY INVESTMENT AGREEMENT (TIA)

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- Process
 - Recipients selected competitively, usually via BAA or RA
 - Kickoff meeting involving technical, acquisition, and legal personnel from both sides
 - Consortium drafts its articles of collaboration
 - CMO Contracting Officers negotiate from model agreement, tailoring provisions to situation
 - Only deviations from model need to be justified



OTHER TRANSACTION FOR PROTOTYPE

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OTHER TRANSACTION FOR PROTOTYPE



OTHER TRANSACTION FOR PROTOTYPE

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- 10 U.S.C. 2371 was enhanced by Section 845 of National Defense Authorization Act of 1994; as amended by Sec. 804 (Pub. Law 104-201); as amended by Sec. 803 (Pub. Law 106-398)
- The Director of DARPA and the Secretary of Military Departments may use “Other Transactions” for **Prototype projects** that are **directly relevant** to **weapons or weapon systems proposed to be acquired or developed** by the DoD
- 3 year authorization (through 9/30/04)



OTHER TRANSACTION FOR PROTOTYPE

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- “Prototype”:
 - “...a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a particular technology or process, concept, end item, or system”
- “directly relevant”
- “weapons or weapon systems”
- “proposed to be acquired”



OTHER TRANSACTION FOR PROTOTYPE

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Limitations/Challenges:

- OT for Prototypes applicable for “research” only
- Transition
- Considerations - competition, data rights, compliance with DoD 5000, documentation
- Criminal statutes, fiscal law, general laws
- Culture



OTHER TRANSACTION FOR PROTOTYPE

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Benefits:

- Outside of procurement laws and regulations (FAR & DFARS)
- Competition, only to the maximum practicable extent
- With or without resource (cost) sharing
- Flexibility, Flexibility, Flexibility



OTHER TRANSACTION FOR PROTOTYPE

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RECENT STATUTORY CHANGE

When the OT is entered into, the team must have:

- 1/3 cost share of the total cost of the program, or
- At least one nontraditional defense contractor is participating to a significant extent, or
- SPE determines exceptional circumstances



OTHER TRANSACTION FOR PROTOTYPE

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“Nontraditional”: An entity that has not, for a period of one year, entered into or performed:

- A contract subject to full CAS coverage
- or,
- A FAR-based contract in excess of \$500K
 - To carry out prototype projects or
 - To perform basic, applied or advanced research



OTHER TRANSACTION FOR PROTOTYPE

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“Significant Contribution”:

- OT Guide – The contribution causes a material reduction in the cost or schedule or increases the performance of the prototype.
- The non-traditional performer is responsible for a key component, technology, or process without which the prototype cannot be successfully developed.



OTHER TRANSACTION FOR PROTOTYPE

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- Food for Thought
 - Changes
 - No Government directed unilateral changes
 - No claims for equitable adjustment caused by changes
 - Termination
 - No “Termination for Default”
 - No “Termination for Convenience”



OTHER TRANSACTION FOR PROTOTYPE

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- Food for Thought (*continued*)
 - Costs
 - No mandatory cost principles or accounting standards
 - Subcontracting
 - Government system not required
 - No mandatory clause flowdowns
 - Management structure
 - Sound business judgment absolutely necessary
 - Team Approach